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Office of the Governor

July 5, 2019

Secretary Rick Perry
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Secretary Perry:

On July 3rd, as Nevadans were preparing to celebrate our nation's 243rd birthday, we learned that the Department of Energy (DOE or Department) has again illegally shipped classified radioactive material to Nevada. We also learned that these shipments have been going on for more than a decade. Nevada's trust and confidence in the Department has already been diminished by recent past events. Now, any remaining trust and confidence is at best tenuous because of the Department's newly disclosed actions.

On July 3rd, Deputy Secretary Brouillette called to inform us that the Department of Energy has been shipping incorrectly labeled low-level radioactive waste (LLW) from DOE's Y-12 facility in Oak Ridge, TN to the Nevada National Security Site (NNSS). Mr. Brouillette noted that the incorrectly labeled waste is in fact mixed low-level radioactive waste (MLLW) that violates the prevailing Waste Acceptance Criteria (WAC) for disposal at NNSN. Further, the Deputy Secretary informed us that this waste stream may contain a reactive material. Such waste has never been approved for disposal at the NNSN, not only violating the WAC, but also numerous other state and federal laws and regulations. Yet worse, these illegal shipments apparently have occurred monthly for the past 12 years. These egregious acts—whether acts of negligence or indicative of something else—are unconscionable and have potentially put the health and safety of Nevadans and our environment at unacceptable risk, including the employees of NNSN and the communities in Nevada and along the transportation routes of this material to NNSN.

Unfortunately, these latest revelations relating to DOE shipments of radioactive material into Nevada are not anomalous. DOE has eroded the trust of Nevadans through a systemic failure to perform the basic function of ensuring the integrity of the waste disposal mission at NNSN and through the deception and obfuscation of Nevadans regarding the recent shipment and storage of weapons grade plutonium at the NNSN Device Assembly Facility (DAF) at the end of last year—the basis of recent and ongoing legal action and a separate issue from the one before us now, but illustrative

of DOE's failure to respect Nevada's sovereignty as an independent state and to adhere to the basic precepts of honesty and forthrightness, which form the basis of any relationship of trust.

In May of 2019, your Department entered into a Settlement Agreement with the Nevada Division of Environmental Protection (NDEP) as a result of a fine levied against DOE by NDEP for accepting low-level radioactive waste for disposal at the NNSS that was subsequently found to be contaminated with chromium above the Resource Conservation and Recovery Act (RCRA) Toxicity Characteristic Leaching Procedure (TCLP) limit, thereby rendering it a mixed low-level radioactive waste, in violation of 40 CFR 261.24 and 262.11. The most recent acknowledgment of shipments and disposal of a mischaracterized MLLW at the NNSS illustrates a complete lack of implementation of any lessons-learned throughout the DOE-complex from the previous violation and calls into question the Department's complex-wide waste characterization and disposition knowledge and oversight of its contractor workforce.

We request the DOE immediately provide all information currently known or discerned regarding the mischaracterized and illegal shipments and disposal of material from the Y-12 facility, including, but not limited to the attached set of information requests. Until Nevada leaders receive acceptable answers to these questions, given the systemic failure of DOE to properly protect the health and safety of Nevada citizens, we demand that DOE cease and desist all shipments of radioactive waste to the NNSS. Additionally, as a precursor to resuming future waste shipments and disposal at NNSS, the State of Nevada requests, at a minimum that:

- DOE enter into an enforceable settlement agreement with the NDEP, to include at a minimum, a path forward for addressing the mischaracterized Y-12 shipments; and
- DOE establish independent verification technology at the NNSS to inspect and verify the content of future waste streams designated for disposal at NNSS. The DOE's continued reliance on employees and contractors at other DOE sites to properly package and label waste shipments to NNSS has proven both ineffective and potentially dangerous and disrespects the citizens of Nevada who have sacrificed greatly for decades in support of our Nation's safety and security.

Finally, we request that DOE provide the information requested in the attachment no later than three working days after receipt of this letter.

Respectfully,



Governor Steve Sisolak
State of Nevada



Catherine Cortez Masto
United States Senator



Jacky Rosen
United States Senator

ATTACHMENT

Information Required by the State of Nevada Regarding Mischaracterized Waste Shipments to the Nevada National Security Site July 5, 2019

Background

On July 3, 2019, at approximately 4:00 pm PDT, State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection, Bureau of Federal Facilities (NDEP) staff were notified by the U.S. Department of Energy Environmental Management Nevada Program and National Nuclear Security Administration/Nevada Field Office personnel that they had been notified by personnel at the DOE's Y-12 National Security Complex that a classified wastestream sent to the Nevada National Security Site's Area 5 Radioactive Waste Management Complex (NNSS) for disposal had been mischaracterized. Profiled and disposed of as a classified low-level radioactive waste, the wastestream was recently found to be reactive, thereby rendering it a classified mixed low-level radioactive waste. *[Upon requesting specifics of the waste stream, NDEP staff were told that the matter was still be investigating and a written notification will be provided to NDEP staff on Monday, July 8, 2019, with a more detailed report to follow within fifteen days.]*

Such illegal disposal of MLLW constitutes a serious violation of the NDEP issued NNSS facility RCRA permit, RCRA Land Disposal Restrictions (40 CFR Part 268 adopted by reference under Nevada Administrative Code 444.8632) and is potentially subject to enforcement under Nevada Revised Statutes 459 (including not limited to 459.585, 459.590, and 459.600).

Information Required

The State of Nevada demands DOE provide the following information relating to the shipment and disposal of MLLW from Y-12 to NNSS (including as provided for under NRS 459.575 (Subpoenas)):

1. Provide a timeline for when and how DOE became aware that the material was MLLW, including supporting documentation, including what steps DOE immediately took after becoming aware.
2. Identify and provide copies of the specific approved Waste Profiles and Waste Acceptance Review Panel documentation under which Y-12 shipped to and NNSS received the MLLW, including a description of omissions or inaccuracies in the approved Waste Profiles as related to the MLLW and an explanation of what led to these omissions or inaccuracies.

3. Provide a description of the physical state and chemical composition of the MLLW, including a list of radioisotopes, their concentrations, activity, and half-lives.
4. Provide an itemized chronological summary table for each shipment showing Y-12 origin location, packaging description, individual and cumulative shipment and disposal volumes and weights, shipment and disposal dates, disposal cell and grid locations, and transportation modes and routes for shipment of all mislabeled material.
5. Provide the list of all potentially applicable RCRA hazardous waste codes and hazardous characteristics (ignitability, corrosivity, reactivity, and/or toxicity) and the specific material properties that render the material hazardous.
6. Provide dates and methods used for all original and any revised basis for the hazardous waste determination of the MLLW as required by 40 CFR 262.11.
7. Provide detailed description of compliance or non-compliance with the NNSS facility RCRA permit and RCRA Land Disposal Restrictions (40 CFR Part 268) and the NNSS Waste Acceptance Criteria, including a detailed explanation and supporting information on the stability and safety of the MLLW in its current disposal location at NNSS, including information specifically related to the safety of NNSS personnel and other Nevadans living and working in the vicinity of the NNSS and to the safety of individuals living along, working along, and traveling on the routes used to transport the MLLW.
8. Provide all supporting documentation, including but not limited to, analytical test results and data validation reports, shipping manifests and/or bills of lading, and inventory logs.
9. Provide a plan and schedule for a root cause analysis and development and implementation of a corrective action plan, including specific steps that will be taken to ensure that such mislabeling does not occur again.
10. Provide any and all other information relative to the shipment and disposal of the material in question from the inception of the packaging and shipping campaign to the proposed remedial actions and remedies.